



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable W. K. Baldrige  
County and District Attorney  
Denton, Texas

Dear Sir:

Opinion No. 0-7151

Re: Does each net of meshes of less than three inches square, placed in waters of Lake Dallas by one person, constitute a separate and distinct offense; and does each fish unlawfully taken and caught by means of said nets constitute a separate and distinct offense?

We have received your request of March 8, 1946, for our answers to the following questions:

"Does each net of meshes of which are less than three inches square which is under the care, ownership, management, and control of one person and placed on the waters of Lake Dallas in Denton County, Texas, constitute a separate and distinct offense; and further, does each fish unlawfully taken and caught by means of said nets constitute a separate and distinct offense?"

Your questions arise under Article 927, Vernon's Annotated Penal Code of Texas, from which we quote:

"Except the ordinary hook and line or trot line, or a set or drag net or seine, the meshes of which shall be three or more inches square, or a minnow seine not more than twenty feet long used for catching bait, no person shall place in any fresh water river, creek, lake, bayou, pool, lagoon or tank, in this State, any net, trap or other device for catching fish, or take or catch any fish from said waters with any net, seine, device, or hook and line or trot line, other than as permitted herein. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars."

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The previously quoted article makes illegal both (1) the act of placing in fresh water any net whose meshes are less than three inches square, and also (2) the act of taking or catching of fish from fresh waters with any net other than as permitted therein.

We think it is clear that each act of placing a net in fresh waters of this State contrary to Article 927, supra, is a separate act and a separate offense, because each placing is a separate transaction occurring at a different place and at a different time. 22 Corpus Juris Secundum, page 60, states: "Separate and distinct acts of the same nature performed at different times generally constitute separate offenses."

However, the catching or taking of fish from an unlawful net is one transaction resulting from a single act or volition, regardless of the number of fish taken. It is well settled in accordance with this theory that "the stealing of different articles at the same time and place, so that the transaction is the same, is but one offense, and the accused may not be convicted on separate indictments charging different parts of the transaction as distinct offenses." Wilson vs. State 45 Tex. 76, and Willis vs. State, 6 S. W. 857. "Where several acts are in fact part of one transaction, there is only one crime although each of such acts might have constituted a crime in itself if not part of such transaction." 22 Corpus Juris Secundum, pp. 60-61.

The failure of the Legislature to expressly make the unlawful taking of each fish a separate offense, just as they have made a separate offense of the unlawful taking of each game bird and each game animal under Article 873, Vernon's Annotated Penal Code, indicates the Legislature did not contemplate nor desire that each unlawful taking of a fish be a separate offense under Article 927, supra.

Therefore, you are advised that each net, the meshes of which are less than three inches square, placed in the waters of Lake Dallas in Denton County, Texas, constitutes a separate offense as each placing of a net is a separate transaction. You are further advised that the unlawful taking or

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catching of fish as prohibited by Article 927, supra, resulting from one transaction, for example, from one net, constitutes only one violation as it is but one transaction, regardless of the number of fish caught or taken.

Yours very truly

*Gov. Rell*

ATTORNEY GENERAL OF TEXAS

By

*Stewart W. DeVore*  
Stewart W. DeVore  
Assistant

SWD:sd

